

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Confirmation No.: 4307

Application No.: 10/797,338

Filing Date: March 10, 2004

Applicant: Jon P. Yarbrough

Group Art Unit: 3714

Examiner: Sunit Pandya

Title: Method of Playing a Bingo-Type Game With A Mechanical Technological Aid, And An Apparatus And Program Product For Playing The Game

Docket No.: 060583.00004

REASONS SUPPORTING APPLICANT'S PRE-APPEAL BRIEF
REQUEST FOR REVIEW

Mailstop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

In response to the Examiner's Final Office Action mailed June 16, 2008 and the Advisory Action dated November 12, 2008, the Applicant submits herewith a Pre-Appeal Request for Review. Applicant respectfully requests a review of the final rejection in the above-identified application for the following reasons.

Claims 1, 4-22, 25-32, 34-46, 49-51, 54 and 55 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over Yoseloff (U.S. Patent No. 6,398,645) and further in view of Falciglia (U.S. Patent No. 5,935,002).

The Applicant respectfully traverses the 35 U.S.C. §103(a) rejection of claims 1, 4-22, 25-32, 34-46, 49-51, 54 and 55.

Each of independent claims 1, 22, 32, 46, 49 and 50 recite, among other things, that *the mechanical technological aid is selected from the group of one or more mechanical spinning reels rotatable about at least one axle, one or more mechanical spinning wheels rotatable about at least one axle, one or more mechanical die rotatable about at least one axle, one or more mechanical playing cards rotatable about at least one axle, and combinations thereof.*

The Examiner correctly noted that Yoseloff is completely silent with respect to “displaying the end game result represented by a mechanical technological aid” and that “instead Yoseloff teaches [of] video reels.” (Emphasis added).

Yoseloff specifically teaches away from the claimed inventions in that it expressly states, as the Examiner has already previously acknowledged, that the “use of mechanical devices is awkward, inconvenient and cumbersome” (see column 2, lines 1-2). Furthermore, element 144, as best understood by the Applicant, is shown (e.g. in Fig. 1) as being a video display, and there is absolutely no description whatsoever that element 144 can include one or more spinning members rotatable about an axle.

Furthermore, it is questionable whether the Examiner’s assertion that Yoseloff “teaches ... video reels” with respect to the award representation of the end game result is accurate. Specifically, there is no description in Yoseloff that the award representation of the end game

result, such as element 144 in Fig. 1, is displayed as a “video reel.” The only apparent disclosure of an “end game result” is shown in Fig. 1 at element 144, which appears to be a simple static video display. **While the device disclosed by Yoseloff can supposedly change the display information on the video display, there is no mechanical (e.g., rotational) movement of any members about an axle.** Thus, one of ordinary skill in the art would not look to Yoseloff for guidance on a bingo-type game, or method of using the same, as presently claimed.

The Examiner apparently cited Falciglia to remedy the deficiencies in the disclosure of Yoseloff. However, Falciglia suffers from its own deficiencies, as well.

Neither Yoseloff and/or Falciglia, either alone or in combination therewith, disclose or suggest the invention as claimed in any of independent claims 1, 22, 32, 46, 49 and/or 50, as amended, or the claims dependent therefrom.

The passage at column 11, lines 23-30, of Falciglia that was partially cited by the Examiner is reproduced below:

As shown in FIG. 8, the game client 170 includes an event processor 196 connected to a user input device 198, a game display 200, and a communications interface 202. The event processor 196 operates the application program for allowing the user to play the bingo-like game. The event processor 196 performs wheel spins; i.e. the event processor 196 operates the selectable symbol generator to generate a new set of five random symbols and to change a current display of the selectable display regions to display the generated random symbols to **simulate** the spinning of multiple mechanical wheels generating random symbols as in slot machines in the prior art. (Emphasis added).

Thus, Falciglia merely endeavors to **simulate** the “mechanical” spinning of game symbols, but it is actually a **video** representation of spinning symbols. That is, there is no

disclosure or suggestion of a “physical” axle upon which “physical” technological aids (whatever form they may take) actually rotate thereabout. **Falciglia only discloses the use of “virtual” representations of spinning symbols, without the need for any mechanical aids or components whatsoever.**

Furthermore, Falciglia does not disclose or suggest that the video simulation of the game symbols are used to indicate an end game result, as presently claimed, but rather appear to be part of the primary game itself. Thus, as with Yoseloff, **it is clear that Falciglia also teaches away from the claimed inventions in that it specifically discloses that video representations, as opposed to mechanical technological aids, are to be used to depict game symbols or other game-related indicia.** Therefore, one of ordinary skill in the art would not look to Yoseloff and/or Falciglia, either alone or in combination therewith, for guidance on a bingo-type game, or method of using the same, as presently claimed.

Because claim 1 is allowable over Yoseloff and/or Falciglia, either alone or in combination therewith, for at least the reasons stated above, claims 4-21, which depend from and further define claim 1, are likewise allowable. Because claim 22 is allowable over Yoseloff and/or Falciglia, either alone or in combination therewith, for at least the reasons stated above, claims 25-31, which depend from and further define claim 22, are likewise allowable. Because claim 32 is allowable over Yoseloff and/or Falciglia, either alone or in combination therewith, for at least the reasons stated above, claims 34-46, which depend from and further define claim 32, are likewise allowable. Because claim 50 is allowable over Yoseloff and/or Falciglia, either alone or in combination therewith, for at least the reasons stated above, claims 51, 54 and 55, which depend from and further define claim 46, are likewise allowable.

Accordingly, the Applicant contends that the 35 U.S.C. §103(a) rejection of claims 1, 4-22, 25-32, 34-46, 49-51, 54 and 55 has been overcome or rendered moot.

The Applicant respectfully submits that each item raised by Examiner in the Final Office Action of June 16, 2008 has been successfully traversed, overcome or rendered moot by this response. The Applicant respectfully submits that each of the claims in this Application is in condition for allowance and such allowance is earnestly solicited.

The Review Panel is invited to telephone the Applicant's undersigned attorney at (248) 723-0487 to discuss this request and the reasons therefore.

Any needed extension of time is hereby requested with the filing of this document.

The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 08-2789.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS

December 2, 2008

Date

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